REMARKS

The above-referenced patent application has been reviewed in light of the Office Action, dated January 26, 2006, and the Advisory Action dated June 20, 2006. Reconsideration of the above-referenced patent application in view of the foregoing amendments and the following remarks is respectfully requested.

Claims 1 and 3-12 are pending. Claims 1, 3, 6, and 7 are currently amended. Though, it should be noted that the amendments are not necessarily narrowing, such as the amendment to claim 7, for example, and as such, no prosecution history estoppel should apply for some of these amendments. Claims 9 -12 have been added. Assignee respectfully asserts that support for the new claims is found throughout the application, such as at pages 8 and 9, for example, and that no new matter has been added. Claim 1 stands rejected under 35 USC § 112. Claims 1 and 3-8 also stand rejected under 35 USC § 102(e) over US Patent Publication No. 2005/0058149 of Howe (hereinafter Howe). Claim 6 has been objected to by the Examiner.

With regard to the Examiner's rejection under 35 USC § 112, Assignee respectfully asserts that the Examiner has failed to establish a prima facie case that Assignee's claim 1, as previously presented, and/or as currently amended, is unpatentable. In addition, MPEP § 706.03(d) states that "[w]henever possible, [the Examiner should] identify the particular term(s) or limitation(s) which render the claim(s) indefinite and state why such term or limitation renders the claim indefinite." In the present case, the Examiner has not identified even one term or limitation of claim 1 which would render that claim indefinite. The Examiner merely asserts that claim 1 is generally narrative and indefinite because "there are no active steps of method being claimed." However, Assignee respectfully notes that claim 1 includes the language "pre-arranging," "establishing," "interleaving," and/or "transmitting," for example. In light of this, Assignee respectfully asserts that this rejection by the Examiner has been traversed. If the Examiner intends to maintain this rejection, then Assignee respectfully requests that the Examiner point out particular portions of claim 1 that do not satisfy 35 USC § 112. Absent any

such specificity from the Examiner, Assignee respectfully asserts that the Examiner has not established a prima facie case that claim 1 does not satisfy 35 USC § 112. Furthermore, Assignee respectfully asserts that the scope of claimed subject matter in this case can be discerned by one of ordinary skill. Therefore, Assignee respectfully requests that the Examiner withdraw this ground for rejection.

With regard to the rejection under 35 USC § 102(e), Assignee respectfully asserts that the Examiner has failed to establish a prima facie case of unpatentability because Howe does not satisfy the requirements of 35 USC § 102(e). Specifically, 35 USC § 102 states that:

> A person shall be entitled to a patent unless ...
> e) the invention was described in
> (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or
> (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language;

Assignee respectfully would like to note that the present application was filed February 9, 2001 and claims priority to a provisional application filed February 15, 2000. Assignee would also like to note that Howe has a filing date of September 26, 2004. While Assignee takes no position with regard to the teaching of Howe, it is clear that Howe does not satisfy either requirement of 35 USC § 102(e). Specifically, Howe does not satisfy 35 USC § 102(e)(1) because Howe was not filed before the present application. Likewise, Howe does not satisfy 35 USC § 102(e)(2) because Howe is not a patent granted on an application filed before the present application. It is therefore respectfully requested that the Examiner withdraw this ground for rejection.

In the Advisory Action, the Examiner maintains that the rejections under Howe are proper because Howe "is a CIP of 10/412,784 filed on April 11, 2003, which is a division of now U.S. Patent No. 6,611,519, filed on August 19, 1998." The Examiner goes on to state that "Examiner rejects claim 1 on the basis of Fig. 37 of Howe reference 2005/0058149, which is also disclosed in figures 2-7 and

steps 1-7 of U.S. Patent No. 6,611,519 is on August 19, 2998. Thus, the claims are given the benefit of the earlier filed application." Assignee respectfully asserts that this statement by the Examiner mischaracterizes the legal standard under 35 USC § 102(e). Whether or not subject matter in Howe would have been entitled to a priority date from one of its parent applications, an issue on which Assignee respectfully does not take a position, is irrelevant for determining the date when Howe became available as prior art under 35 USC § 102(e). In order to qualify as prior art under 35 USC § 102(e) a reference must be either "1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent." (emphasis supplied). The Howe reference relied upon by the Examiner simply does not satisfy this requirement because the Howe reference is not an application filed in the United States before the present application was filed. Furthermore, even if the subject matter in Howe was present in the earlier parent applications, which Assignee in no way concedes, it does not matter under 35 USC § 102(e) because determining prior art status under 35 USC § 102(e) in these circumstances focuses on the respective filing dates of the applications not the respective priority dates of the applications.

The Examiner did, however, identify portions of US Patent 6,611,519 (hereinafter Howe II) which the Examiner asserts would support the subject matter relied on from Howe. In the interest of furthering the prosecution of the present application, Assignee will attempt to respond to the Examiner's rejection as if the generally mentioned portions of Howe II formed the basis for the Examiner's rejections in the present application. However, Assignee respectfully requests that the Examiner point out specific paragraphs and/or drawing figures relied on from Howe II in any future Office Actions.

Specifically with regard to Howe II, the portions referred to by the Examiner, Figs. 2-7 and steps 1-7, do not establish a prima facie case of unpatentability under 35 USC § 102(e). More specifically, Howe II does not teach "interleaving one or more signals; and transmitting the interleaved one or more signals along said connection," as recited in Assignee's claim 1. In light of this, it is respectfully

asserted that Assignee has traversed this rejection. It is therefore respectfully requested that the Examiner withdraw this rejections and that claim 1 be allowed to proceed to allowance.

Claim 3-12 patentably distinguish from Howe II on at least a similar basis as claim 1. It is therefore respectfully requested that these claims be allowed to proceed to allowance as well.

With regard to the Examiner's objection to the language "capable of" in claim 6, Assignee respectfully asserts that the Examiner has not established a proper basis for this rejection. Specifically, the Examiner has not identified any statute or federal rule relating to patent claim language that is not satisfied by the language "capable of". In addition, Assignee respectfully asserts that even within the analytic framework for claim interpretation relied on by the Examiner, MPEP §2106, the Examiner has not established that "capable of" does not limit claim 6. Assignee respectfully asserts that "capable of" does not suggest or make optional the language that follows it. In the context of claim 6, "capable of", along with the language that follows, constitutes at least one limitation on claimed subject matter and the Examiner has not established any basis for his assertion to the contrary. Therefore, Assignee respectfully requests that the Examiner withdraw this objection to claim 6.

For at least the reasons above, Assignee respectfully asserts that claims 1 and 3-12 are allowable and requests that the Examiner permit these claims to proceed to allowance. Although additional arguments may exist for distinguishing the cited documents, the foregoing is believed sufficient to address the Examiner's rejections. Likewise, failure of the Assignee to respond to a position taken by the Examiner is not an indication of acceptance or acquiescence of the Examiner's position. Instead it is believed that the Examiner's positions are rendered moot by the foregoing and, therefore, it is believed not necessary to respond to every position taken by the Examiner with which Assignee does not agree.

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CONCLUSION

In view of the foregoing, it is respectfully asserted that all of the claims pending in this patent application, as previously amended, are in condition for allowance. If the Examiner has any questions, he is invited to contact the undersigned at (503) 439-6500. Reconsideration of this patent application and early allowance of all the claims is respectfully requested.

Please charge any shortages and credit any overcharges of any fees required for this submission to Deposit Account number 50-3703.

Respectfully submitted,

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